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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000361-ME
AND
NO. 2014-CA-000371-ME

G.L.M.
AND
M.L.I.N.

APPELLANTS

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NOS. 12-AD-00134 AND 12-AD-00135

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
T.A.M., AN INFANT; AND S.E.M.,
AN INFANT

APPELLEES

AND

NO. 2014-CA-000417-ME

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY

CROSS-APPELLANT

M.L.I.N.; G.L.M.;
S.E.M., AN INFANT;
AND T.A.M., AN INFANT

CROSS-APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JONES, AND VANMETER, JUDGES.

VANMETER, JUDGE: M.L.I.N. (mother) and G.L.M. (father) appeal from the Kenton Circuit Court's January 28, 2014, judgment terminating their parental rights to their two children, T.A.M. and S.E.M. The Cabinet for Health and Family Services cross-appeals, arguing the circuit court abused its discretion by excluding evidence of a prior judgment which involuntarily terminated father's parental rights to another child. For the following reasons, we affirm.¹

Mother was the sole caretaker of these children prior to their removal. Father has had no contact with the children since 2011 and has not paid any child support since then. In January 2012, the Cabinet filed a petition against both parents alleging educational neglect with respect to the children. The petition

¹ The Cabinet's response briefs were rejected by this court as deficient and the Cabinet failed to timely correct the deficiencies. Accordingly, the Cabinet relies on the circuit court's findings of fact, conclusions of law, and judgment in support of its position that the parental rights of mother and father were properly terminated.

alleged that S.E.M. had missed 32.5 days of school – 21 days without an excuse. He had been tardy 13 times. The previous school year he had been enrolled 2 months after school began, was absent 26 days, and tardy 24 days. He had been picked up from school late 11 times during the 2011-2012 school year. The school often could not contact the parents because their phone was not working or disconnected. As to T.A.M., he was a pre-schooler and was absent 31 days in the 2011-2012 school year. The previous year he was not enrolled until 2 months after school began and missed 40 days. As with S.E.M., the school often was unable to contact the parents.

In March 2012, the Cabinet filed a second petition, alleging issues with the cleanliness of mother's home and the children's hygiene. The petition alleged that mother's home was in disarray, filthy and unsafe. Three dogs were in the home and urine and animal feces were throughout, including on the children's clothes. The children had not seen a dentist and were wearing the same clothes for as much as one week at a time. When a social worker visited the home in February 2012, he found S.E.M. dirty, smelly, and without socks. The children were being cared for by mother's 91-year-old grandfather, who often watched the children while mother disappeared for days at a time.

When the social worker returned to mother's home in March 2012, he found the children sleeping on the floor, the home in disarray, clothing and trash

everywhere, dog feces throughout the home, urine and feces odor, limited food, and bad hygiene on the part of both children. Based on these allegations, the court entered an emergency custody order placing the children in the Cabinet's custody. The children have remained in foster care ever since.

In April 2012, the court made a finding of neglect as to both children. The case came before the court for a disposition hearing in July 2012, at which time the court adopted the following recommendations of the Cabinet: mother cooperate with the Cabinet, visit the children consistently, obtain and maintain sufficient housing and employment, remedy her legal obligations, pay child support, participate in parent-child interaction therapy, and complete a psychological assessment. As to father, the court adopted the Cabinet's recommendations that he cooperate with the Cabinet, complete a substance abuse assessment and follow all recommendations, complete a parenting assessment and follow all recommendations, maintain a substance abuse and crime-free lifestyle and not expose his children to that, allow Ohio Child Protective Services to assess his history and home, participate in drug screens at the Cabinet's request, and pay child support.

In November 2012, the Cabinet filed a petition to involuntarily terminate mother's and father's parental rights. The court appointed a Warning Order Attorney for both parents. Both parents appeared for the termination trial, which the court conducted over four days. During the course of trial, father filed a motion in limine to exclude evidence of a prior Kenton Circuit Court judgment

which involuntarily terminated his parental rights to another child. The Cabinet sought to introduce this certified judgment to satisfy one of the grounds for termination under KRS² 625.090(2) – whether a parent’s rights have been involuntarily terminated before and whether the conditions that led to prior termination continue to exist. Father objected to the admission of this judgment on the basis that he had not been represented by counsel in the previous termination action. The court granted father’s motion in limine, finding that no attorney was ever appointed to represent the interests of father in the prior termination action and father had a right to counsel since his parental rights were at risk of termination. The court admitted the prior judgment for use against mother, apparently since mother did not file a motion in limine to exclude it.

Following trial, the court entered a judgment terminating mother’s and father’s parental rights to S.E.M. and T.A.M. Both parents now appeal, arguing the court erred by failing to recognize the progress they have made and that their children could be returned to them in the foreseeable future. The Cabinet cross-appeals, arguing the court abused its discretion by excluding the prior judgment entered against father. We affirm the court’s termination decision and decline to address the Cabinet’s claim on cross-appeal since substantial evidence exists to support termination even without consideration of the prior judgment.

The involuntary termination of parental rights is a scrupulous undertaking that is of the utmost constitutional concern. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 119–20, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996).

² Kentucky Revised Statutes.

The U.S. Supreme Court has unequivocally held that a parent has a “fundamental liberty interest” in the care and custody of his or her child. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). This fundamental interest “does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State....” *Id.* at 754–55, 102 S.Ct. 1388. Therefore, “[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Id.*

The Commonwealth's TPR [termination of parental rights] statute, found in KRS 625.090, attempts to ensure that parents receive the appropriate amount of due process protections. KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

Cabinet for Health & Family Servs. v. K.H., 423 S.W.3d 204, 209 (Ky. 2014).

Here, the court thoroughly followed the statutory process for termination.

The court reviewed all of the materials submitted, including the school attendance records and the photographs showing the uninhabitable state of mother’s home.

The court concluded that the children were neglected consistent with KRS 600.020(1)(a). Both parents have failed to provide the children with adequate care, supervision, food, clothing, shelter, medical care, dental care, and financial support necessary for the children’s well-being. Since removal, mother has provided some financial support via court-ordered child support but not at the level ordered.

Father has not provided any financial support. Both parents have failed to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the children. Neither parent completed any of the tasks they were ordered to complete. Based on this evidence, the circuit court correctly determined that the children were neglected within the meaning of KRS 600.020(1).

Next, the court concluded that termination of parental rights would be in the children's best interests. The court found that the children are in their fourth foster placement, are doing well and are attending school. T.A.M. is doing well academically, S.E.M. had to be held back a year. Both children have adjustment disorder but are receiving mental health treatment. A foster-to-adopt home has been identified for placement. Both children's aggressive behaviors have decreased and neither has been hospitalized in over a year. The Cabinet indicates that no other services could be offered to mother that would improve the situation and father has not complied with any of the services offered. In light of this evidence, the court properly determined that no reasonable expectation for improvement exists and the children's best interests would be served if mother's and father's parental rights were terminated.

As to whether grounds for involuntary termination exist under KRS 625.090, the court found by clear and convincing evidence that both parents have abandoned the children for a period of not less than 90 days and have failed to parent or protect the children for a period in excess of 6 months. Father has made no effort

to see the children, before or after they were placed in foster care. Mother initially saw the children while they were in foster care but has ceased visiting them. This evidence, along with the court's finding that the parents have not provided the necessary care for the children and that no reasonable expectation exists that they will do so in the foreseeable future provides sufficient grounds for termination. Mother and father have failed to show that the court's decision to terminate parental rights was erroneous or that the proceedings afforded them were fundamentally unfair. We decline to address the Cabinet's claim on cross-appeal since sufficient grounds for termination exist without evidence of the prior judgment terminating father's rights to another child.

For the foregoing reasons, the Kenton Circuit Court's judgment terminating mother's and father's parental rights is affirmed.

ALL CONCUR.

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